

Islamization of the Southeast Asia: The Role of Turks

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Abstract

Recently the dramatic developments of Asian countries, especially China, Malaysia, Japan and India in terms of economic and finance activities brought the idea that the 21st century will be the century of Asia and therefore this region has great potential to be political, economical, and civilizational centre of the world. In that respect the role that Malaysia will play is significantly important for the region and the Muslim ummah. Islamization of the region has to be taken into consideration for long term success. The past experience that Malaysia had, must be used. It's known that Islamization of the Southeast Asia took more than centuries. Since the religion of Islam is a universal religion, its message conveyed to other part of the world through either Arabs, Turks, Malays or any other Nations who comprehended the inner and outer dimension of the eternal message of the Qur'an which granted them the leadership of the world.

In the early years of the thirteenth century, relations between the traditional Islamic heartland and Malay world began to increase. Especially the Turk-Malay relationship has been increased gradually since the beginning of the thirteenth century with the coming of the Rumis (Asian Turks) to the Archipelago and the great period of Islamization in Southeast Asia after the thirteenth century, Islam acquired strong political power in several part of the Malay world.

In this paper, especially the Turk-Malay relationship will be investigated which it would take three distinct historical stages: the beginning of the thirteenth century, the pan-Islamic era of Sultan Abdulhamid II, and after the Ottoman Empire was replaced by the Republic of Turkey.

Keywords: Southeast Asia; Islamization; Turk-Malay relationship; the century of Asia.

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The Role of Turks and the Turk-Malay Connection

The connections of the Turks, who originated in the steppes of Central Asia, with Southeast Asia are based on very significant values and solid relationships. The locations of their lands have several features in common: both are surrounded by three seas and semi-islands; however, their climates differ greatly and they are located far from each other. Notwithstanding these factors, Turks and Malays have strong cultural, religious, and historical relationships. The Turks played a great role in the Malay Archipelago in spreading Islam and helped the Malay people defend themselves against European colonialism and the ensuing negative (in the sense of anti-Islamic) influences.

The Turk-Malay relationship can be divided into three distinct historical stages: the beginning of the thirteenth century, the pan-Islamic era of Sultan Abdulhamid II, and after the Ottoman Empire was replaced by the Republic of Turkey.

The first stage began with the coming of the Rumis (Asian Turks). After the great period of Islamization in Southeast Asia during the thirteenth century,² Islam acquired strong political power in several part of the Malay world. In terms of establishing Islam in the land, India was an influential country. It was followed by the Moghul-Turkish rule in this stage. In the course of this Pax Turcica, Sunnī Islam spread in the Indian sub-continent, particularly in the areas of modern-day Pakistan and Bangladesh, toward the Malay world via merchants, traders, Sufism, sheikhs and murīds, and dervishes.³ An account by a French historian indicates this significant Turkish connection and role in the Malay world: “A great number of the Asian Turk, called Rumis, some of whom made themselves masters of some ports, as Meliques Az, who made a considerable settlement at Diu, where he was a long time troublesome to the Portuguese.”⁴

Hurgronje identifies these Rumis as Ottoman Turks on the grounds that the Ottoman Sultan was traditionally known in Southeast Asia as “Raja Rum.”⁵ Historians have speculated that these Turks might have been the people of Selçuk Empire (1040-1157). The Ottoman Sultan immediately sent naval and military aid to the Malays when the Portuguese attacked Malacca in 1511. After Malacca fell, the centre of Islam in the Malay world shifted to Aceh. The Ottomans continued to do what they could to protect the Malay world until the beginning of the twentieth century.⁶ The Acehnese offered an annual tribute as a token for protection, but the Ottoman sultans always refused to accept it.⁷ In mid-1850, this traditional Turkish protection was reconfirmed in two fermans issued by Sultan Abdulmejid and the region’s independence was

² Sayyid Qudratullah Fatimi, *Islam Comes to Malaysia* (Singapore: Malaysian Sociological Research Institute, 1963), 4.

³ Mehmet Özey, *Islamic Identity and Development Studies of the Islamic Periphery* (Kuala Lumpur: Forum, 1990), 24.

⁴ Sayyid Qudratullah Fatimi, *ibid.*, 81.

⁵ Snouck Hurgronje, *The Acehnese*, vol. 1 (Leyden: Brill, 1906), 208

⁶ Anthony Reid, *The Contest for North Sumatra, Atjeh, The Netherlands and Britain, 1858-1898* (Kuala Lumpur: University of Malaya Press, 1969), qf. Mehmet Özey, *ibid.*, 25.

⁷ Hurgronje, *ibid.*, 208-210.

preserved against European penetration for over three hundred years starting from 16th century. The Sultan of Aceh sent Abd ar-Rahman to Istanbul to seek the sultan's help when the Dutch made a last attempt to conquer Aceh in 1868. As a result, Mithat Pasha urged that the Ottoman fleet be dispatched to Sumatra.⁸

The second stage, that of Sultan Abdulhanid's pan-Islamic policy, opened a new relationship between the two peoples because it was a constant source of worry for the Dutch and British colonial powers in Southeast Asia. Holland's increasing penetration into Malay world in the 1890s caused the Malays to seek assistance and at least moral guidance from Istanbul.⁹ The Ottoman Sultan, whom the Malays and Indonesians viewed as "God's Shadow on Earth,"¹⁰ sent Muḥammad Kamil Bey as his Consul General to Batavia (1897-1899). This official reawakened the connection between the Middle Eastern and Southeast Asian Muslims. In addition, one of his most important roles in Batavia was to foster closer links between the Southeast Asian and Middle Eastern presses, such as the Arabic-language publications al-Malumat of Constantinople, Thamarat al-funun of Beirut, and several Egyptian newspapers—all of which complained about the injustices and oppression visited upon the Muslims by the Dutch.¹¹ These efforts bore some fruit, as seen in the mutinies in Southeast Asia. Religious passions began to be aroused in those Muslims who sincerely believed that the Europeans were trying to undermine their beliefs. Britain's war against the Ottoman Empire, as well as despotic Dutch colonialism, encouraged the region's Muslims to attack the colonial powers wherever and whenever they could.¹² One important element of Sultan Abdulhamid II's pan-Islam policy was reflected in the Singapore Mutiny of 1915, when Indian and Malay Muslims refused to obey the British order to deploy to the Middle East in order to fight the Turks.¹³ As a result, 530 were arrested in connection with the ensuing conflicts, 47 were sentenced to death, 64 were exiled for life, 73 were exiled for lesser terms, 12 were imprisoned for rigorous terms, and 16 to shorter terms. The executions were considered barbaric.¹⁴ Notwithstanding these executions, the mutiny was a potentially serious threat to the British colonial government.¹⁵

⁸ Anthony Reid, "Indonesian Diplomacy: A Documentary Study of Atjehnese Foreign Policy in the Reign of Sultan Mahmud, 1870-1874," *Journal of the Malay Branch of the Royal Asiatic Society* (JAMBRAS) vol. 42, part 2, (1969), 121.

⁹ Selim Deringil, Legitimacy Structures in the Ottoman State: The Reign of Abdulhamid II (1876-1909), *International Journal of Middle East Studies*, vol. 23, No. 3 (Aug. 1991), 350 (345-359).

¹⁰ Anthony Reid, "Nineteenth Century Pan-Islam in Indonesia and Malaysia," *The Journal of Asian Studies*, vol. 26, No. 2 (Feb. 1967), 267 (267-283).

¹¹ Reid, Nineteenth, *ibid.*, 281 (267-283).

¹² A.J. Stockwell, "Imperial Security and Moslem Militancy, with Special Reference to the Hertogh Riots in Singapore (December 1950)," *Journal of Southeast Asian Studies*, vol. 17, No. 2 (Sep. 1986), 331 (322-335).

¹³ R.W.E. Harper and Harry Miller, *Singapore Mutiny* (Singapore: Oxford University Press, 1984), 25.

¹⁴ Nicholas Tarling, "'The merest pustule.' The Singapore Mutiny of 1915," *Journal of the Malaysian Branch of the Royal Asiatic Society* LV, 2 (1982), 50.

¹⁵ Nadzan Haron, "Colonial Defence and British Approach to the Problems in Malaya 1874-1918," *Modern Asian Studies*, vol. 24, No. 2 (May 1990), 293 (275-295).

The third stage, which started after the caliphate was abolished, did not sever the strong connection between the two worlds. Undeniably, the main attraction for this relationship had always been the institution of caliphate as represented by the Ottoman sultan in his capacity as the symbol of Muslim unity. Hitherto, the vision of Ottoman magnitude power, and glory and the all-powerful caliph continued to exist among the Indian, Indonesian, and Malay Muslims. The masses of the Malay, as well as their political and intellectual leaders, looked to the Ottomans for inspiration and sympathized with them during the Turkish-Russian war of 1877, the First World War, the Turkish National Independence War, the Balkans wars, and in many other events.¹⁶

As with the other sultans of Johor, there was a unique connection between Istanbul and Johor. This was made especially clear when Sultan Abu Bakar of Johor, a new type of relationship had already started. Ruqayyah Hanım, a member of the Ottoman sultan's harem, was presented as an honorary gift to the Sultan. She married Ungku Abdul Majid after their arrival at Johor, and the couple had three sons, one of whom was Ungku Abdul Hamid, the father of Ungku Abdul Aziz, the former Vice-Chancellor of the University of Malaya. Upon her husband's death, Ruqayyah Hanım married Dato' Jaafar. Seven children resulted from this union, one of whom, Dato' Onn, founded UMNO; his son Tun Hussein was the third Prime Minister of Malaysia. After her second husband died, Ruqayyah Hanım married to Abdullah al-Attas, a well known Yemeni Arab trader whose sole son, Ali al-Attas, had three sons, all of whom became leading personalities in their respective fields: Hussein Alatas (d. 2007) was an outstanding Malay sociologist and a founding member of the Malaysian People's Movement Party; Naquib al-Attas (b. 1931) is a prominent Muslim Malay Sūfī philosopher and scholar, as well as the founder and director of International Institute of Islamic Thought and Civilization (ISTAC) and finally the current prime-minister of Malaysia Dato' Sri Haji Mohd Najib bin Tun Abdul Razak (b. 1953) has also Turkish blood from the same family tree.

In sum, the Turk-Malay relationship is not a weak tie; rather, it is a very strong relationship rooted in both people's respect of religious, cultural, and family-oriented relationships. Notwithstanding the great distance that separates them, they are united by their shared Islamic values.

The Malaysian Legal System

In the globalized world nothing can be hidden, for transparency is the main tool of a multi-cultural society. Human rights and the indispensable rights of each person have to be implemented and guaranteed in order to create a just, calm, and peaceful society. If such an environment cannot be created, the country may be dragged into anarchy and consider such concepts as peace, dialogue, integrity, harmony, justice, and unity to be no more than castles in the air. Society and its players must learn from history how peaceful societies have been maintained for centuries through internal harmony and unity. The Ottoman legal system might be

¹⁶ Zainal Abidin bin Ahmad Pendeta Za'ba, "A History of Malay Literature XIV: Modern Developments," *Journal of the Malay Branch of the Royal Society* (December 1939), 151-152, qf. Mehmet Özey, *ibid.*, 27.

a good example for multi-cultural society, and its Majallah al-Ahkām was a viable approach for Muslim countries like Malaysia.

One of Malaysia's distinctive characteristics is to embrace different social structures within a multiracial, multi religious, and multi-judicial atmosphere. According to the Department of Statistics and Economic Planning unit, the country's population of 27.7 million (2008) is expected to reach 29 million by 2010. The population comprises no fewer than 178 ethnic groups.¹⁷ Based upon Wikipedia, I calculate that there are about twenty-one different ethnics, 6 million members of which live in East Malaysia and the other 23 million are living in Peninsular Malaysia. Malay and other Bumiputera (indigenous non-Malay) groups make up 65% of the population, Chinese 26%, Indians 7.1%, and other unlisted ethnic groups 1%. Although Islam is the official religion, Malaysia is considered a multireligious society because its constitution guarantees religious freedom even if the country were secular. According to the Population and Housing Census 2000 figures, approximately 60.4% are Muslim; 19.2% are Buddhist; 9.1% are Christian; 6.3% are Hindu; and 2.6% are Confucian, Taoist, and other traditional Chinese religions (e.g., animism, folk religion, Sikhism, and atheist or "unknown" [0.9%]).¹⁸

Power in the Parliament is spread among the various religious and ethnic segments of the population. Although more than one-third of the Parliament and its Federal Cabinet are non-Malay and non-Muslim, the Malays occupy a dominant position in the government and in the ruling party UMNO (United Malay National Organization).¹⁹ The Diwan Rakyat (House of the People, a.k.a. House of Representatives) consists of 222 seats (MPs) elected from single-member constituencies drawn based on population in a general election using the first-past-the-post system. The current National Front (Barisan Nasional) coalition, formed in 1973 as the successor to the Alliance (Perikatan) and which has been the ruling political party since independence, occupies 4,082,411 votes of 50.27% of 140 seats which represent s 63.1% of all seats in the parliament. The main opposition party, the Pan-Malaysian Islamic Party (PAS), occupies 1,140,676 votes of 14.05% of 23 seats which represents 10.4% of all seats in the parliament. Despite its multicultural composition, Malaysian society and politics are clearly defined as "Islamic." To the Malay people, "it is almost unthinkable to be anything but Muslim and they expect their government and its legal structure to protect that identity."²⁰ In the mind of citizens, being Malay or being Muslim are the same, for once you convert to Islam you are automatically considered Malay, based on the Federal Constitution. Article 160 defines "Malay" as "a person, who professes the religion of Islam, habitually speaks the Malay language, and conforms to

¹⁷ Muḥammad Hashim Kamali, *Islamic Law in Malaysia: Issues and Developments* (Selangor: Ilmiah Publishers, 2000), 1.

¹⁸ http://en.wikipedia.org/wiki/Demographics_of_Malaysia#cite_ref-islam01_22-0.

¹⁹ Chandra Muzaffar, *Tolerance in the Malay Political Scene*, in Syed Othman Alhabshi and Nik Muṣṭafā Nik Hassan, *Islam and Tolerance* (Kuala Lumpur: Institute of Islamic Understanding, 1994), 143.

²⁰ Muḥammad Hashim Kamali, *ibid.*, 5.

Malay customs.”²¹ Beside this, a define of identity in Malaysian society, it has to be expressed that Muslims, from very historical realities, feel honoured to show peaceful cultural diversity and the Qur’an itself encourages Muslims to respect cultural and religious diversity and yet to retain their identities: “O people, surely We have created you of a male and a female, and made you tribes and families that you may know each other...”²² It could be said that a multi-legal system for a multi-cultural society would be the best way to unite different races and religions so that the society can avoid violence, chaos, and discrimination as much as possible.

Malaysia’s long legal historical experience with a colourful environment is the result of a great deal of cultural diversity. Its legal history can be traced back to sometime around the fifth century, although its political history only started in 1963. As every human society has been based upon some sort of basic primordial rules before a codified legal system, Malay society was based on some legal foundations hidden within the community: the customary rules of the tribes, which relied upon belief in a common blood, patriarchal authority, and judicial organs operated by the tribal leader.²³

Malaysian laws emanate from the five basic sources: the written law, the federal and state constitutions, and legislation passed by the Parliament and State Legislative Assemblies. This also includes prior legislation, the application of which has been extended and is still enforceable, judicial decisions, customary law; English law; and Islamic law.²⁴ Despite Malaysia’s political unity, its distinct geographical regions (viz., Peninsular Malaysia, Sabah, and Sarawak), the country is governed by different set of laws and court systems in the interest of social harmony; however, the Federal Constitution is the supreme law of the federation. Malaysian law has been divided into three types: public law, international law, and private law. Generally, public law governs the individual-state relationship and is subdivided into constitutional law (deals with the Parliament’s position of supremacy and the citizens’ rights) and criminal law (deals with various offences committed by individuals against the state). International law, on the other hand, is divided into public and private. The laws that prevails between states is called public international law and the law, which may be called a conflict of laws or part of municipal laws, deals with cases involving more than one country; private law, which deals with the rights and duties of individuals amongst themselves, is considered under three divisions: contracts, tort, and trust. Contracts deal with the rights and obligations that arise due to agreements, tort involves offences committed against individuals, and trust governs the relationship between trustees and beneficiaries.²⁵

²¹ *Laws of Malaysia, Federal Constitution* as of 10 April 2002 (Selangor: International Law Book Services, 2002), 198.

²² Qur’an 49:13.

²³ Abdul Majeed Mohamed Mackeen, *Contemporary Islamic Legal Organization in Malaya*, Monograph Series No. 13 (New Haven: Yale University Southeast Asia Studies, 1969), 9.

²⁴ Ahmad Ibrahim and Ahilemah Joned, *The Malaysian Legal System*, 2nd ed. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1995), 4-5.

²⁵ Lee Mei Pheng, *General Principles of Malaysian Law* (Selangor: Penerbit Fajar Bakti, 2001), 3-13.

Contact with Islamic Law

In the early years of the thirteenth century, relations between the traditional Islamic heartland and Malay world began to increase. Accordingly, Islamic law came into contact with the peninsula's customary life, which was embedded in the people's life and was considered the law of the land.²⁶ According to local historians, Islam reached Kelantan some time before 1181. The proof offered for this claim is a gold coin (masdinar) found at Kota Kubang Labu with the inscription of "Al-Julus Kelantan" (The Government of Kelantan). The reverse side mentions the name of al-Mutawakkil and the date 577 AH, which corresponds to 1181 CE.²⁷ The claim that Islam reached Southeast Asia no later than the end of the thirteenth century is beyond dispute.²⁸ The view of the local historians was verified by the *Kitab Jeografi* (The Manual of Geography) and the *Tarikh Negeri Kelantan* (The History of Kelantan), both of which indicate that Islam had influenced the administration of the state since 1181.²⁹ In addition to these records, Ibn Batutah recounted his meeting with Queen Urduja, a Muslimah, in Kuala Krai, Kelantan, when Arab travellers sailed from India to China in 1297.³⁰

After Malacca became a Muslim kingdom in the fourteenth century under Sultan Iskandar Shah, the region became a centre of Islamic civilizational life during the fifteenth century and played a significant role in firmly rooting Islamic values and laws in Southeast Asia. In fact, the presence of an Islamic Malacca caused a general weakening of the heretofore Hindu and Buddhist political, social, and cultural influence and even dominance over the life of the Peninsula's Malay population. In order to expand political relationships with other Muslims, Sultan Iskandar Shah welcomed Arab, Turk, Persian, and Chinese Muslims to Malaya; he went so far as to visit China to invite them to come to the region. Cheng Ho, a Muslim Chinese Commander, came with the Chinese fleet in 1409 in strengthen the China-Malacca relationship. Between 1403 and 1433, no less than seven naval expeditions visited the South Asian Sea, Malacca, and the Indian Ocean.³¹

Islamic law had a far-reaching influence upon local Malay custom in Pahang. Over time, many of its provisions became based upon Islamic law, such as *qishās* (retilation), fines, illegal sexual intercourse, sodomy, theft, robbery, apostasy, non-observance of the obligatory prayers, *jihād*,

²⁶ Mackeen, *ibid.*, 14.

²⁷ Asa'ad Shukri bin Haji Muda, "*Sejarah Kelantan*" (Kota Bharu: Pustaka Aman Press, 1962), 13, qf. Abdullah Alwi Haji Hassan, *The Administration of Islamic Law in Kelantan* (Selangor: Percetakan Dewan Bahasa dan Pustaka, 1996), 1.

²⁸ Peter Riddel, *Islam and the Malay-Indonesian World: Transmission and Responses* (Honolulu: University of Hawaii Press, 2001); Ahmad Ibrahim, Sharon Siddique, and Yasmin Hussain eds., *Readings on Islam and Southeast Asia* (Singapore: ISEAS, 1985); Mohamad Taib Osman, ed., *Islamic Civilization in the Malay World* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1997), qf. Eric Tagliacozzo, eds., *Southeast Asia and the Middle East Islam, Movement, and the Longue Durée* (Singapore: NUS Press, 2009), 2.

²⁹ Asa'ad Shukri bin Haji Muda, *Detik-Detik Sejarah Kelantan* (Kota Bharu: Pustaka Aman Press, 1977), 20-30, qf. Abdullah Alwi, *ibid.*, 1.

³⁰ Ibn Batutah, *Rihlah*, ed. Dr. Ali al-Muntasar al-Kattani, 2 vols. (Beirut: Muassasah al-Risalah, 1981), 714; Asa'ad Shukri bin Haji Muda, *ibid.*, 30, qf. Abdullah Alwi, *ibid.*, 1.

³¹ Ahmad and Joned, *ibid.*, 7-8.

legal procedures, witnesses, oaths, trade, sales, security, investments, trusts, payment for labour, land, gifts, and waqafs (charitable foundations). The laws of Johor, especially, reflect the greatest incorporation of laws based upon Islamic law and principles. Traces and evidences of Islamic law and traditions are also embodied within the Malay law.³² The Majallah Ahkam Johor, Undang-undang Sivil Islam³³ was the translated version of the Ottoman Empire's Majallat al-Ahkam al-'Adliyyah. Qadri Pasha's Hanafi code was translated and eventually became known as the Ahkam Shariyyah Johor. Islamic law influenced the Constitution of Trengganu (1911)³⁴ and the Constitution of Johor (1895).³⁵ Clearly, the law of the Malay land was Islamic before the coming of the British. The British colonialists replace Islamic law with British law administration, however, Islamic law was allowed to function in matters of family and inheritance, and some matrimonial and ta'zir (punishment) offences.³⁶

Malaysian Constitutional Law

Although Article 3 of the Federal Constitution states that Islam is the state religion, Article 11 proclaims that other religions may be practised in peace and harmony in any part of the Federation. The Administration of Islamic law Act 1993 (Federal Territories) consists of eleven parts: preliminary; the Majlis Agama Islam Wilayah Persekutuan; Appointment of Mufti, Authority in Religious Matters and the Islamic Legal Consultative Committee; Sharī'ah Courts; Prosecution and Representation; Financial; Mosque; Charitable Collections; Conversion to Islam; Religious Education and General.³⁷ Historically, the modern constitutional move of the States of the Federation began when the first meeting of the first Council of State was officially opened on September 10, 1877; it is continued until the formation of the Federation of Malaya with two agreements: the State Agreement and the Federation of Malaya Agreement in 1948. With some essential amendments the 1948 Constitution remained in force until the independence of the Federal of Malaya in 1957.³⁸

Article 4 states that the constitution is the supreme law of the Federation. Therefore, any law or regulation passed after the Merdeka (Independence) Day would be invalid if it was inconsistent with this Constitution. The Supreme Head of the Federation is to be called Yang di-Pertuan Agong (Article 32) and shall be elected by the Conference Rulers for a term of five years; however, the Conference Rulers can remove him from office and he can resign any time by confirming his intention to do so in writing.

³² Abdullah Alwi, *ibid.*, xlvii.

³³ *Al-Ahkām Al-'Adliyyah, Undang-Undang Sivil Islam*, trans. Akhir Haji Yaacob (Selangor: Dewan Bahasa dan Pustaka, 2002).

³⁴ *Laws of the Constitution of Johor*, Malayan Constitutional Documents, vol. 2.

³⁵ *Laws of the Constitution of Trengganu*, Malayan Constitutional Documents, vol. 2.

³⁶ Ahmad and Joned, *ibid.*, 43-47.

³⁷ Ahmad and Joned, *ibid.*, 47-49.

³⁸ *Ibid.*, 143.

The Parliament consists of 180 members with the House of Parliament (the Dewan Negara) and the House of Representatives (Dewan Rakyat), as well as the Head of the Federation (Yang di-Pertuan Agong). The Federation's legislative authority is vested in the Parliament. Article 66 states that the power of Parliament to make laws shall be exercised by Bills passed by both Houses (or, in the cases mentioned in Article 68, the House of Representatives) and, except as otherwise provided in this Article, assented to by the Yang di-Pertuan Agong.³⁹ According to Article 45/2, members of the Senate are appointed by the Head of the State for a three-year term. Following the constitutional development, however, the king's absolute power gradually diminished. He now functions as an advisory body that can only assent to the Parliament's decisions.

The Head of the Federation appoints the Prime Minister from the members of the House of Representatives. According to Article 43/7, a person who is a citizen by naturalisation or by registration under Article 17 shall not be appointed to this post. In contrast to the Head of the State, the Prime Minister shall hold office as long as he fulfils all of its requirements and has the vote of the majority of the members of the House of Representatives.

Malay Customary Law

From the fifth to the fifteenth centuries, foreign influence percolated into the Malay world. The customs and legal systems of neighbouring Sumatra and India penetrated into the country's legal system at various times. Over time, "early Malay customary law" emerged from these foreign influences. Furthermore, this early customary law survived in traditional proverbs and narratives. Besides Chinese traders and missionaries who settled in Malaya, Indian Hindus who migrated to the Malay states influenced their political, social, and institutional structures. This occurred mainly in the concept of kinship, tribal polities (which eventually changed), the paraphernalia of court ritual and ceremony still seen today, and their ideas and forms of worship. Naturally, the influence of Hindu and Buddhist (Indian and Chinese) custom and laws in legal matters and social affairs was obvious.⁴⁰ After Islam reached Malaya, its legal system made many contributions and became a significant part of Malay customary law.⁴¹ These pre-modern bases of Malay customary law were nourished by *perpateh*⁴² and *temenggong*.⁴³ The first is considered to be an extension of the tribal laws and the latter, by contrast, was adapted to a bilateral social system that emphasises patriliney and endogamy.⁴⁴

³⁹ Article 66.

⁴⁰ Ahmad and Joned, *ibid.*, 6-7.

⁴¹ Mackeen, *ibid.*, 11.

⁴² See more about this system in B.J. Brown, "Justice and Adat Perpateh," in *Papers on Malayan History*, ed. K.G. Tregonning (Singapore: Journal of Southeast Asian History, 1962), 135-161; P.P. Buss-Tjen, "Malay Law," *AJCL*, 7 (1958), 260-262; M.G. Swift, *Malay Peasant Society* (London: The Athlone Press, 1965), 12-22.

⁴³ For more on this system, see P.P. Buss-Tjen, *ibid.*, 262-263; R.J. Wilkinson, "Introductory Sketch: Law," in *Papers on Malay Subjects* (Kuala Lumpur: 1908), 34-45.

⁴⁴ Mackeen, *ibid.*, 11.

Archaeologists have found proof of the existence of human beings living in the area about 35000 years ago. This reflects the significance of customary law in the region; the excavations of human race in the limestone caves between 3000 and 2000 B.C. in the Malay Peninsula and the migration of people from southern or western China to this region between 2500 B.C. and 1500 B.C.⁴⁵

Tribal Legal System

The aboriginal inhabitants of Peninsular Malaya can be categorized as Negritos, Senois, and Proto-Malays. The Negritos were one of the least organized groups in these tribal nomadic societies. Every tribe was led by a powerful chief who was usually the oldest man. The chief of each tribe concerned would assemble and, assisted by a few advisers, settle inter-tribal disputes. He had absolute authority on his subjects. In small communities like Negritos, crime and cheating were rare and thus the culprit would be fined, scolded by all tribal members, or whipped. The Senois, who were more settled and organized, called their leaders Penghulu. Upon his death his eldest son would inherit this name. If the leader died without leaving a direct male heir, anyone could be appointed to this post. Economic transactions were primitive and private property was unknown. Therefore the land was held in common; the production, harvesting, and processing of food were communal; and the harvests and products were shared among the tribe's members. In administrative terms, the Proto-Malays were the most developed amongst the indigenous tribes. The head, known as Batin, was helped by the Jinang, Pengulu Balai, Jukra, and Pnaglima. The leader administered the law based upon his knowledge of the tribe's laws and custom. The penalties varied according to local interests: some tribes imposed the death penalty for murder and others would impose fines, as well as impale, drown, and expose offenders to the sun, depending upon the seriousness of their crime. Some of these penalties were the result of the contact with Hindu and Islamic law and civilization.⁴⁶

The Portuguese and Dutch Influence

Prior to the Portuguese and Dutch invasions, the Malacca region was ruled by the sultan, who administered justice in his capacity as the highest court. The ruler, portrayed as the source of law and the fountain of justice, determined which penalty fit the crime (e.g., killing, stabbing, slashing, assault and battery, robbery, theft, making false allegations, and lying); he could also decide not to impose any penalty. The administration of justice was carried out by the three offices: the Bendahara, the Temenggong, and the Laksamana. The first one was equated with the Prime Minister today as regards the amount of power he can wield; the second one, who had the power of a Chief of Police, led investigated criminal matters and was responsible for building and supervising prisons; and the last one, the Admiral, administered judicial affairs.⁴⁷ Hindu, Islamic and indigenous Malay laws were all recognized and implemented in the Sultanate of

⁴⁵ Ahmad and Joned, *ibid.*, 6.

⁴⁶ *Ibid.*, 10-12.

⁴⁷ Richard Winstedt, *Malaya and Its History* (Longon: Hutchinson's University Library, 1948), 14-100.

Malacca; the Undang-undang Melaka and the Undang-undang Laut Melaka served as the sultanate's two legal digests.⁴⁸ These digests were based upon the laws of adat Temenggong and Shāfi'ī legal school. Some sections, however, were not really from that particular school but rather were taken from Islamic family law. In addition, the penalties were also derived from the Islamic local customary legal systems. The Undang-undang Melaka, a particular law of Malaysia, also has been strongly influenced by Islamic law.⁴⁹

After the Portuguese invaded and conquered Malacca in 1511, they established a military and civil administration in the region. In civil affairs, the Governor was assisted by a Council composed of the Ovidor (Chief Justice), the Viador (Mayor), the Bishop or his deputy, and a Secretary of State. Despite this, however, it is not clear whether the Portuguese introduced their own laws or not, because the Portuguese judges introduced many ordinances without providing any specific details as to how they had been derived. On the other hand, Dutch influence began in the region as early as the seventeenth century. When Malacca was transferred to Dutch control, laws were issued by the central government in Holland and Batavia (Java) and the local executive. In order to unify the region's laws, the Dutch East India Company tried to introduce standard regulations that applied throughout the Indonesian Archipelago. Mainly an attempt to deal with Malacca, it was failure. In fact, only a guide for the Court of Justice in Malacca remained.⁵⁰ Some Indonesians migrated to Peninsular Malaysia while Malacca was under Portuguese and Dutch control. After a degree of law and order was established in the region, Malacca became a centre of trade.⁵¹

The Introduction of British Law

Both the West and the East originated legal systems that they tried to apply in the Malay Archipelago; nevertheless, these laws were often not welcomed and consequently faded away. For instance, the Portuguese and Dutch tried to apply their law in Malacca during their respective occupations of that land; however, their legal systems had little, if any, effect upon on the country as a whole. Despite these repeated failures, the British colonial administration also sought to introduce its legal system in the region. By the Royal Charter of Justice of 1826, British law was introduced in the Straits Settlements (a group of British territories in Southeast Asia); it was introduced in the Malay states through legislation. These laws were mostly related to private law of torts, contract, property, commercial and industrial law, all of which were governed by a unified system of law and organisation based on common law, equity, and local and imperial legislation; domestic relations were provided for in group personal law. In contrast,

⁴⁸ Liaw Yock Fang, ed., *Undang-undang Melaka: Laws of Melaka* (The Hague: M. Hijhoff, 1976), 62.

⁴⁹ See Muḥammad Yusof Hashim, *Islam Dalam Sejarah Perundangan Melaka (Islam in Malacca Legal History)* (Kuala Lumpur: Persatuan Sejarah Malaysia, n.d.)

⁵⁰ Ahmad and Joned, *ibid.*, 15-16.

⁵¹ Saw Swee Hock, *The Population of Peninsular Malaysia* (Singapore: Singapore University Press, 1988), 37.

Islamic law mostly dealt with matters of religious observance, succession, matrimonial relations, and domestic affairs generally in the Malay territories and other Muslim countries.⁵²

The British also were involved with slavery, forced labour, and land tenure, which came under the regulations dealing with these respective subjects. While they were dealing with the land's rulers as advisors on legal matters, they neither interfered with nor questioned the Malays' religion (Islam) or customs. Despite their assurances, however, the British did interfere with Islam law and its administration in all of the states. This resulted in the introduction of British law on the Indian model in various field, such as the adoption of the Indian codification of the principles of British law; the Panel Code of the Straights Settlements; and the Indian Evidence Act, which was adopted in Selangor by the Courts Regulation (1893), in Perak (1894), and in the Federated Malay States with the Revised Edition (1936). The Criminal Procedure Code of India was adopted, and land enactments were enacted in the various states between 1897 and 1903. All of the principles underlying the Malay Muslim laws related to criminal law, evidence, criminal procedure, contract, and land were replaced by the principles of British law. In addition, the Judicial Commissioner's Regulations and Orders in Council abolished the Courts of the Residents and Sultans in Council in 1896, and the Final Court of Appeal for the Federation was introduced with the establishment of a Judicial Commissioner. Subsequently, all judges in the new legal system were trained according to the British legal system. The changes continued: the Malay States' Civil Law Enactment (1937), which was extended to the other Malay states; the Civil Law Ordinance established, which established British law throughout the whole Federation of Malaya (1956), including the Borneo states that shared British common law. After independence, however, many Acts (e.g., the Companies Acts [1965], the Insurance Act [1963], and the Hire Purchase Act [1967]) were changed and based on Australian models.⁵³ British law was practiced in the Malay states usually by the decisions of judges when they could not find any appropriate customary and local laws when British-trained judges were applying British law.⁵⁴

The Dual Court System

Given that Malaysia contains different ethnic groups, the formation of a dual legal system was necessary. Even if these two systems have different judicial methods and principles, both of them have influenced each other and cooperate in many judicial matters. In fact, they continue to draw closer together. For example, "in recent years even the names of the courts, the manner of addressing the judges and their dress on the bench have been adapted from those of the civil court. New court complexes house both the civil and the Syariah courts under the same roof. Some Muslim civil court judges sit in the Syariah Courts of Appeal with Syariah Appeal Court

⁵² Mackeen, *ibid.*, 17.

⁵³ Ahmad and Joned, *ibid.*, 17-26.

⁵⁴ *Ibid.*, 63-72.

Judges, complementing each other. Civil court judges are often invited to speak at seminars meant for syariah court judges.”⁵⁵

Basically, the Shari’ah consists of an enormous number of rules and maxims derived from the Qur’an, the Sunnah, ijmā’ (consensus), and qiyās (analogy). Therefore, it refers to “commands, prohibitions, guidance and principles that God has addressed to mankind pertaining to their conduct in this world and in the next.”⁵⁶ This legal system, as well as others, is a normative system that regulates and controls human behaviour and nature. The Sharī’ah courts function according to Islamic law as their philosophy is to implement every ruling within the Islamic legal framework.

As law is a social phenomenon, the society brings its needs. The emergence of law and a legal system, as well as their functions, in a society reflect the society’s nature, as can be seen in the fact that different social structures demonstrate different forms of law and roles for the law. Despite many differences, the society gradually moves toward cooperation, consensus, the common good, peaceful social change, and social equilibrium.⁵⁷ The nature of Malaysian society, which is multi-religious, is reflected in the country’s dual court system because the Sharī’ah court has no jurisdiction over non-Muslims. Bear in mind that if a non-Muslim citizen wants to have pursue a court case, where can he/she can go? Conversely, the conflict occurs in Muslim citizens if there is no Sharī’ah court.

The Sharī’ah Court System

The Sharī’ah courts, according to the Administration of Islamic Law Act 1993, have three levels: the Sharī’ah Subordinate Court, the Sharī’ah High Court, and the Sharī’ah Appeal Court. A Chief Sharī’ah Judge is appointed by the Yang di-Pertuan Agong (Supreme Head of State) on the advice of the Minister after consulting with the Majlis. The qualified person must be a citizen and must have been, for a period of not less than ten years preceding his appointment, a Sharī’ah High Court Judge, a Kadhi, a Registrar, or a Sharī’ah Prosecutor of a State; being learned in Islamic law is not a requirement for that post.⁵⁸ The Chief Sharī’ah Judge shall be the Chairman for proceedings of the Sharī’ah Appeal Court. The Yang di-Pertuan Agong may also appoint High Court Judge after consulting with the Majlis on the Minister’s advice.⁵⁹

A Sharī’ah High Court shall have jurisdiction throughout the Federal Territories, be presided over by a Sharī’ah judge and shall try any offence in its criminal jurisdiction committed by a Muslim. The guilty party shall be punished under the Enactment, the Islamic Family Law

⁵⁵ Abdul Hamid Hajj Mohamad, *Civil and Shariah Courts in Malaysia: Conflict of Jurisdiction, in Islamic Law in the Contemporary World*, ed. Zainal Azam Abd. Rahman (Kuala Lumpur: IKIM, 2003), 14.

⁵⁶ Muḥammad Hashim Kamali, “Source, Nature and Objectives of Shariah,” *The Islamic Quarterly*, vol. XXXIII, No. 4 (1988), 215.

⁵⁷ Anwarul Yaqin, *Law and Society in Malaysia* (Selangor: International Law Book Services, 2002), 13.

⁵⁸ *Administration of Islamic Law* (Federal Territories), 1992, 40-41, cf. Ahmad Ibrahim and Ahilemah Joned, *The Malaysian Legal System*, 2nd ed. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1995), 53.

⁵⁹ *Ibid.*, 53.

(Federal Territories) Act 1984, or any other written law prescribing offences against precepts of Islam that are currently in force. It may impose any punishment provided therefore; and hear and determine, in its civil jurisdiction, all actions and proceedings in which the parties are Muslim. A Shari'ah Subordinate Court shall have also jurisdiction throughout the Federal Territories and be provided over by a judge of the Shari'ah Subordinate Court. The Shari'ah Appeal Court shall also have the jurisdiction to hear and determine any appeal against any decision made by the Shari'ah High Court in the exercise of its original jurisdiction and shall have supervisory and revisionary jurisdiction over the Shari'ah High Court.⁶⁰

Legal officers and lawyers (peguam syarie) are also required, besides competent judges for the Shari'ah courts, as this is the norm in civil legal procedures. In order to pursue legal activities and help the litigating parties and the courts, professionals are needed who can better administer the Islamic law in the Shari'ah-based procedures. Complementary units must also be provided, such as education and the training of future judicial and legal officers or lawyers. Some universities, among them the International Islamic University of Malaysia and the University of Malaya, provide educational, training courses, and moot trials for these aspiring professionals.

The Civil Court system

A multi-cultural and multi-religious society naturally requires a dual court system to fulfil its subjects' expectations. Malaysia's dual court system is successful in this regard. The Shari'ah-based legal system is for the Muslims, while the civil legal system, which is based on the fundamental requirement that one be judged by the appropriate legal system, is for the non-Muslims. Qur'an 2:256 clearly supports the idea of freedom of choice and non-coercion as regards belief or ideology or being judged by any legal system. Each human being is a holy creation whose values and beliefs must be respected.

The civil court system refers to the non-Shari'ah-based legal system, which consists of criminal, civil, and other cases. After colonizing Malays, the British introduced new courts based on their own model with judges and lawyers trained in British common law of England. Interesting, even though the land's traditional law was Islamic, there were no Shari'ah courts before the British came.⁶¹ Nevertheless, three Supreme Courts did exist before the formation of the Malay Federation in 1963: the Supreme Court of the Federation of Malaya; the Supreme Court of Singapore; and the Supreme Court of Sarawak, North Borneo, and Brunei. Each Supreme Court featured a High Court and a Court of Appeal, which was lead by a Chief Justice. The Chief Justices are governed by the Article 122B of the Constitution of Malaysia; the Judges shall be appointed by the Yang-di Pertuan Agong (the supreme head of the federation) on the advice of the Prime Minister of Malaysia after consulting the Conference of Rulers (Majlis Raja-Raja) ⁶²

⁶⁰ Ibid., 54-57.

⁶¹ Abdul Hamid, *ibid.*, 9.

⁶² *Laws of Malaysia*, *ibid.*, 148.

Upon independence, the Court of Appeal was replaced by the Federal Court and according to the Article 131 of the Federal Constitution; the Privy Council continued to function as the country's highest court, entrusted with advising the Yang-di Pertuan Agong formally on dealing with appeals from the Federal Court. The decisions of the higher courts bind lower courts, and some courts are bound by their own decisions. After the Privy Council was abolished in 1985, the Federal Court was renamed the Supreme Court of Malaysia and became the highest court.⁶³ In other words, the hierarchy of Civil Courts begins from the top: the Federal Court, the Court of Appeal, the High Court, the Session Court, the Magistrates' Court, and the Penghulu's Court. The first three courts are considered Superior Courts, whereas the others are considered Subordinate courts. These courts all have jurisdiction in both criminal and civil cases.⁶⁴ On the other hand, Sharī'ah Courts have jurisdiction only over matters related to Muslims. Over time, however some amendments have been made due to the occurrence of jurisdictional conflicts when deciding disputes involving Muslims. One example of this is the amendment of Article 121 (1A).⁶⁵ In the event of a conflict arising between the two courts, the Sharī'ah court's decision prevails over that of the civil court. As Habibullah wrote: "Once it is determined that Syariah courts have jurisdiction on a matter, civil courts' jurisdiction is excluded."⁶⁶ The Sharī'ah courts have no jurisdiction over non-Muslims in any matters.

Conclusion

As we have discussed in the paper, the Turk-Malay relationship goes back to the beginning of the thirteenth century. Herewith, the Turk-Malay relationship is not a weak tie; rather, it is a very strong relationship rooted in both people's respect of religious, cultural, and family-oriented relationships. Notwithstanding the great distance that separates them, they are united by their shared Islamic values. The first contact to the Malay world began with the coming of the Rumis (Asian Turks) to the Southeast Asia in the thirteenth century. Throughout the centuries the relationships was increased and became stronger by the effort of Sultan Abdulhanid's pan-Islamic policy which opened a new relationship between the two peoples because it was a constant source of worry for the Dutch and British colonial powers in Southeast Asia.

Despite the existence of different legal and judicial systems, the nature of the Malay people was very prone to Islamic law and tradition. With this reality, it's said that the relationship with Ottoman Turks with Malay World naturally became stronger. Notwithstanding the Western influence and interference in such matters, the law of the land and its culture is revitalized very often and returns to its origin. For example, the Portuguese and Dutch invasions, as well as British colonialism, disappeared. In contrast to the Westerners, the Ottomans followed a different because of their Muslim character. History shows that the Ottomans came to the Malay

⁶³ Ahmad and Joned, *ibid.*, 123.

⁶⁴ For more details on judicial decisions about these courts, see Ahmad and Joned, *ibid.*, 123-137.

⁶⁵ Farid Sufian Shuaib, Tajul A.A. Bustami, and Mohd Hisham Moh. Kamal, "Administration of Islamic Law in Malaysia," *Malayan Law Journal* (Kuala Lumpur: Butterworth Asia, 2001), 91.

⁶⁶ *Ibid.*, 135.

Archipelago only to protect them from European colonial attacks. The translation and long-term effects of the Ottoman Majallah al-Aḥkām al-‘Adliyyah and the Ḥanafī code of Qadri Pasha is evidence for a significant degree of legal interaction between the Islamic values of both peoples.

Regardless of their Islamic character, the Malays are able to get along very well with others. In fact, incidents of discrimination toward minorities are very rare. In connection with this, the country’s minorities are guaranteed the freedom of belief and religion practice. Establishing civil courts side by side with Sharī‘ah courts provides equal opportunities for legal redress to Malaysia’s non-Muslim citizens. The official protection of these rights, all of which are clearly stated in the Federal Constitution, provide them with peace of mind, trust, and confidence toward the government and the Malays. Therefore, multi-cultural societies may take the Malay legal system as a model for creating a peaceful and tranquil life among the country’s subjects and between them and the government.

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